



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

400 MARYLAND AVENUE, SW  
WASHINGTON, DC 20202-1475

REGION XI  
NORTH CAROLINA  
SOUTH CAROLINA  
VIRGINIA  
WASHINGTON, DC

November 16, 2020

Via Email ([askthesuperintendent@vbschools.com](mailto:askthesuperintendent@vbschools.com))

Dr. Aaron C. Spence  
Superintendent  
Virginia Beach City Public Schools  
P.O. Box 6038  
Virginia Beach, VA 23456-0038

RE: OCR Complaint No. 11-20-1249  
Resolution Letter

Dear Dr. Spence:

This letter is to advise you of the outcome of the complaint that the Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) received on April 7, 2020 against Virginia Beach City Public Schools (the Division). The Complainant filed the complaint on behalf of a student (the Student) attending XXXXX (the School). The Complainant alleged that the Division discriminated against the Student on the basis of disability. Specifically, the complaint alleged that the Division denied the Student a free appropriate public education (FAPE) in his online XXXXX classes by failing to ensure that he received the following accommodations that were required by his Individualized Education Program (IEP):

1. Chunking assignments between XXXXX and XXXXX;
2. Alternatives to oral presentations between XXXXX and XXXXX;
3. Extended time between XXXXX and XXXXX;
4. Reduced assignments between XXXXX and XXXXX; and
5. Modified grading rubric between XXXXX and XXXXX.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the Department. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131 et seq., and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public education systems and institutions, regardless of whether they receive Federal financial assistance from the Department. Because the Division receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II.

During the investigation to date, OCR reviewed information and documents provided by the Complainant. Before OCR completed its investigation, the Division expressed a willingness to

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by fostering educational excellence and ensuring equal access.*

resolve the allegation pursuant to Section 302 of OCR’s *Case Processing Manual*, which states that allegations may be resolved prior to OCR making a determination if the recipient expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them because OCR’s investigation has identified concerns that can be addressed through a resolution agreement. The following is a summary of the evidence obtained by OCR during the investigation to date.

The Section 504 regulation, at 34 C.F.R. § 104.33, requires school districts to provide a FAPE to students with disabilities. An appropriate education is regular or special education and related aids and services that are designed to meet the individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met and that are developed in compliance with Section 504’s procedural requirements. Implementation of an IEP developed in accordance with the Individuals with Disabilities Education Act is one means of meeting this standard. If a school district fails to comply with a student’s IEP, OCR determines whether that failure resulted in a denial of FAPE to the student. In doing so, OCR considers whether the failure had a meaningful adverse impact that deprived the student of educational opportunity.

The Student, who is identified as a student with XXXXX, began the 2019-2020 school year at XXXXX. On XXXXX, the Student’s IEP team changed his placement to XXXXX, specifically the School. The Student began attending the School on XXXXX. Because XXXXX, the Division arranged for the Student to enroll in online courses through XXXXX. At the time of the Student’s enrollment in the School, his IEP dated XXXXX included the following accommodations: XXXXX.

At an IEP meeting on XXXXX, the IEP team maintained the chunking and oral presentation accommodations but removed the extended time accommodation. The team also added the following accommodations to the Student’s IEP: XXXXX.

The Student’s IEP team met again on XXXXX and XXXXX. The team maintained the accommodations for chunking, oral presentations, reduced assignments, and modified grading rubric. The Prior Written Notice indicated that as of the XXXXX meeting, the Student was failing his online courses because he was not completing classwork and turning in assignments.

All schools in the state of Virginia closed for COVID-19 on March 16, 2020, and remained closed through the end of the school year. On XXXXX, the Complainant emailed the XXXXX from the Division who had attended the Student’s IEP meetings on XXXXX, XXXXX, and XXXXX, to express concerns about the Student needing more assistance with his online courses. The Complainant provided information to OCR indicating that she called the teachers of his online courses on XXXXX, and the teachers told her that they were not aware of the Student’s IEP. The Complainant stated that the teachers told her that they would have modified the Student’s assignments and given him more time to submit them if they had known about his IEP.

On XXXXX, the Complainant emailed one of the teachers, stating: “It is very concerning to me that you or the other teachers have not received his IEP. I will follow up with his school to address this.” The Complainant provided information to OCR indicating that after speaking with

the teachers, she informed XXXXX that the online teachers were not aware of the Student's IEP and therefore had not been providing the accommodations.<sup>1</sup> On XXXXX, XXXXX emailed the Complainant:

XXXXX the portion of the registration that indicated special education was missed. This was an error that led to the accommodations not being shared with the teachers. All documentation and explanation has now been submitted to XXXXX to review. XXXXX

The Complainant told OCR that the Student continued to participate in his online classes after the COVID-19 closure. She stated that the XXXXX and XXXXX teachers removed some of his assignments and allowed him to submit some assignments late; she stated that in XXXXX, the timeline to complete the course was extended but assignments were not modified. According to the Complainant, the Student received final grades of XXXXX in XXXXX and XXXXX in XXXXX but had not completed the XXXXX course as of July 2020.

Based on the information reviewed to date, OCR was concerned that the Division failed to ensure that the Student's IEP was distributed to his online teachers and implemented in his online courses in a timely manner. On November 13, 2020, the Division signed the enclosed Resolution Agreement which, when fully implemented, will address the allegation investigated. The provisions of the Agreement are aligned with the allegation and the information obtained during OCR's investigation, and are consistent with applicable law and regulation. The Agreement requires the Division to convene a meeting to discuss the provision of compensatory and/or remedial services to the Student, issue a memorandum to relevant staff regarding procedures for ensuring the implementation of IEPs and Section 504 Plans in online courses, and verify that the Student's IEP is being implemented in any online courses he is currently enrolled in. Please review the enclosed Agreement for further details. OCR will monitor the Division's implementation of the Agreement until the Division has fulfilled the terms of the Agreement.

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the Division's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the Division must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

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<sup>1</sup> In addition to the online teachers not providing accommodations, the Complainant stated that School staff failed to implement the chunking accommodation, which required XXXXX. The Complainant stated that School staff should have XXXXX.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

We appreciate the Division's cooperation in the resolution of this complaint. If you have any questions, please contact Sarah Morgan, the OCR attorney assigned to this complaint, at 202-453-5922 or Sarah.Morgan@ed.gov.

Sincerely,

Kristi R. Harris  
Team Leader, Team IV  
District of Columbia Office  
Office for Civil Rights

Enclosure

cc: Matthew Simmons